

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **Young Supermarkets Limited** pursuant to section 127 of the Act for a renewal of an Off Licence in respect of premises situated at 159 Kapiti Road, Paraparaumu, known as New World Kapiti.

**BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE**

Chair: Ms F M Vining  
Members: Mr T Knowles  
Mr M Dodson

**HEARING** at Paraparaumu on 1 March 2018.

**APPEARANCES**

Mr Clayton Young, Director of the Applicant  
Mr Iain Thain, counsel for the Applicant  
Dr Stephen Palmer, Medical Officer of Health  
Mr Jonathon Lambert, on behalf of Medical Officer of Health  
Ms Katherine McLellan, Inspector

**RESERVED DECISION OF THE COMMITTEE**

***Introduction***

- [1] Young Supermarkets Limited has applied for a renewal of its off licence in respect of its premises situated at 159 Kapiti Road, Paraparaumu, known as New World Kapiti.

***The Application***

- [2] The Applicant's evidence was provided by Mr Clayton Young, who is the director of the applicant company, Young Supermarkets Limited. The Applicant was represented by Mr Iain Thain.
- [3] The Applicant was first granted an off-licence for these premises on 22 March 2016 after taking over from the previous operator. The current licence was due to expire on 22 March 2017 but has remained valid as an application for renewal was lodged prior to this date. The renewal does not seek any changes to the licence nor the conditions of the licence.

- [4] Police inquired into the application and do not oppose renewal of the licence. The Medical Officer of Health opposes renewal of this licence on the grounds that:
- a. The single alcohol area does not limit the exposure of shoppers to displays and promotions of alcohol and advertisements for alcohol (section 112(1)); and
  - b. The days on which and the hours during which the applicant proposes to sell alcohol (sections 131(1)(a) and 105(1)(d)).
- [5] Prior to the hearing members of the Committee undertook site visits individually.

### ***Submissions of Mr Thain***

- [6] Mr Thain submitted that based on the Dannevirke New World case<sup>1</sup> ARLA has determined that the Committee cannot prohibit alcohol displays within the SAA and that the Authority recognised it could only advise on the location of the area. He noted that there had been no suggestion that the current location of the Single Alcohol Area ("SAA") is not acceptable
- [7] Mr Thain highlighted the similarities between the two stores and stated that the Dannevirke New World was revamped and based on Kapiti New World plans. He stated that display cabinets were also in the same area and submitted that ARLA advised there was nothing under the Act which stopped this display from happening, as it was within the SAA<sup>2</sup>.
- [8] Mr Thain noted that Applicant undertook to keep signage smaller than required and also to not do single bottle sales when applying for the original licence and that the Applicant is not seeking to change this.
- [9] Mr Thain submitted that this case is very simple. The area is the same as approved in the original application. He stated that nothing has changed and that the applicant trades within the current timeframe without any alcohol related incidents and has had an exemplary trading record.
- [10] In terms of the objection by the Medical Officer of Health based on the stores trading hours, Mr Thain submitted that this is a broader policy debate and has its place under consideration of a Local Alcohol Policy where trading hours can even be set for all traders, or consideration of policy for the country as a whole with changes being made by Parliament.
- [11] Mr Thain submitted that to change the hours that this store was granted the Committee needs to find cause and nexus for alcohol related harm<sup>3</sup>. He submitted that there is nothing to suggest this store hasn't traded with an exemplary record.
- [12] In short, Mr Thain summarised by submitting that these issues have already been decided by other cases and that there is no reason for committee to change its prior decision.

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<sup>1</sup> *A M MacMaster v G & B Hasler Ltd* [2017] NZARLA PH 169

<sup>2</sup> Para 68

<sup>3</sup> *Lion Liquor Retail Limited v Palmer & Rapira-Davies* [2017] NZARLA PH 170.



### ***Evidence of Mr Young***

- [13] Clayton Young is the director of the Applicant, Young Supermarkets Limited. The Applicant operates the New World situated on Kapiti Road in Paraparaumu ("New World Kapiti").
- [14] Mr Young has been in the supermarket business for about 25 years and has been an approved owner/operator for 6 years. The Applicant has been the authorised operator of New World Kapiti for around 3 years. He operates under a franchise agreement with Foodstuffs North Island Limited ("Foodstuffs").
- [15] Mr Young outlined the processes and policies of the Applicant in terms of the sale of alcohol. He noted that Foodstuffs has a firm policy regarding the sale of alcohol and that the store is run in accordance with this policy. He noted that non-compliance with this policy would result in action from Foodstuffs combined with possible penalties.
- [16] He explained that there is a comprehensive induction programme in place for all new staff and that all staff undertake refresher courses on alcohol legislation at least once a year. He noted that the requirement is that all staff must require ID from anyone who looks under the age of 30 and that any person who is intoxicated will be refused the sale of alcohol. He also stated that the store has a strict "party" rule requiring age identification from all members of a group who look under the age of 30.
- [17] Any person who appears intoxicated will be refused the sale of alcohol. Intoxication is assessed using the "SCAB" method. All incidents with intoxicated customers and all refusals to sell alcohol are recorded in an Alcohol Incident Log Book. The Applicant monitors the store with CCTV and the footage from this is kept for two to three months.
- [18] Mr Taylor stated that in its three years of operating the store the Applicant had never failed a controlled purchase operation. During its three years of operating the store, it has not failed any Foodstuffs mystery shopper audit. Mr Young's evidence was that he was not aware of an actual incidents of alcohol-related harm caused by the sale of alcohol from the store.
- [19] Mr Young noted that when the Applicant first applied for a licence it was initially opposed by MOH. Following negotiation with reporting agencies some changes were made to the SAA at which point the MOH withdrew the opposition to the licence which was subsequently granted.
- [20] Mr Young stated that it is important that the Applicant can offer a full range of all products that they might require – including alcohol. He stated that if customers cannot get a full range at their store, they might choose to shop elsewhere for all their products. He stated that in his view that the neighbouring bottle stores are not competitors of New World. He noted that there had be no change to their sales of alcohol when the Liquor King store opened (which is on the other side of the car park).
- [21] Mr Young disagreed with MOH that the store could "easily rearrange the single alcohol area to better limit exposure of shoppers to displays and promotions of

alcohol, and advertisements of alcohol". His evidence was that the store was designed to allow for a particular range and volume of product including provision of appropriate display space to match demand. He noted that shifting alcohol products into another area would have flow on effects for non-alcohol display space. He noted that the shelving in the SAA is designed to be thicker to carry a heavier load and includes purpose built wires to prevent products falling in the event of an earthquake.

- [22] In response to questions, Mr Young stated that they do not see a big increase in people buying alcohol after 9pm and that not many people buy alcohol after 9pm. He estimated that between 9pm and 10pm approximately 10% of their sales would be alcohol.
- [23] He observed that the majority of their customers drive to the store rather than walk and that they had not had any trolleys lost to date.
- [24] Mr Young was asked about two signs in or near the SAA. The first was the wording on a fridge facing outwards and the second was a hanging banner of a similar type to others in the supermarket. Mr Young explained that the fridge had been repurposed and that the words on the fridge had not been changed. He said he would remove the words from the fridge. He said that he would switch the banners so that one with different wording was placed next to the SAA.

## ***Reporting Agencies***

### *Evidence and submissions of the Police*

- [25] The police did not appear at the hearing nor give evidence.

### *Evidence and submissions of the Medical Officer of Health*

- [26] The evidence for the Medical Officer of Health was provided by Jonathan Lambert and Dr Stephen Palmer.
- [27] Jonathan Lambert is employed by Regional Public Health as a Health Protection Officer and he is an Alcohol Regulatory Officer.
- [28] Mr Lambert acknowledged that the licence renewal application was detailed and well presented.
- [29] Mr Lambert noted that the SAA, and what he termed "end of aisle displays" contained in it, were clearly visible from a number of aisles, particularly the large double aisle which contains bread, butter, cheese, yoghurt, ice cream and other frozen products and the pet food aisle. Mr Lambert provided the Committee with a number of photographs to illustrate this point.
- [30] Mr Lambert submitted that, in his opinion, the "end of aisle alcohol displays and promotions are strategically placed to attract the attention of customers travelling through the store".
- [31] Mr Lambert provided information from three studies regarding the impact of product placement on sales, in particular in relation to "end of aisle displays".



- [32] Mr Lambert also submitted that the body of knowledge around “impulse marketing” continues to grow and that there is no research that suggests that international research on this topic does not apply to New Zealand.
- [33] Mr Lambert also referred to an article described as the KidsCam study<sup>4</sup> which was aimed at assessing the everyday exposure of children to alcohol marketing within supermarkets in Wellington. He noted that the study found that the children in the study were exposed to alcohol marketing on 84.6% of their visits to supermarkets that sold alcohol and that the children did not need to actually pass through the SAA to be exposed to alcohol marketing and that visiting nearby areas was sufficient for exposure.
- [34] He submitted that the applicant could ‘take “all reasonably practicable steps” to minimise exposure to alcohol and alcohol related marketing in the SAA by simply removing the end of aisle displays contained therein’.
- [35] Dr Stephen Palmer is employed by the Regional Public Health Service in the role of Medical Officer of Health.
- [36] Dr Palmer provided the Committee with the NZ Deprivation Index 2013 for the meshblocks in the locality of the store. He noted that there is a relatively high number of decile 9 and Decile 8 meshblocks (10 being the most deprived and 1 being the least). He referred to the New Zealand Health Survey update of 2014/15 as showing that hazardous drinking rises with neighbourhood deprivation.
- [37] Dr Palmer submitted that the evidence is clear on the link between hazardous drinking and health harms, with hazardous drinking being a causal factor in more than 200 disease and injury conditions.
- [38] Dr Palmer provided statistical information from the emergency department at Wellington Hospital on alcohol-related attendances. The evidence provided indicates a higher level of alcohol related harm in relation to residents of central Paraparaumu. He noted that there is a limitation in the information that can be provided as attendances can only be linked back to where the patient resides and not usually to where alcohol was purchased or consumed.
- [39] Mr Palmer submitted that there is a “relative over supply of alcohol in central Paraparaumu in terms of the high number of alcohol outlets and the long trading hours”.
- [40] Dr Palmer noted that the current case law for renewals is provided by *Lion Liquor Retail Limited v Palmer & Rapira-Davies*<sup>5</sup> focuses on the need to establish a causal nexus between the existing alcohol outlet and alcohol related harm. He noted that this decision has been appealed to the High Court and that a decision should be expected shortly.

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<sup>4</sup> *Children’s exposure to alcohol marketing within supermarkets: An objective analysis using GPS technology and wearable cameras*, Chambers et al, Health & Place 46 (2017) 274

<sup>5</sup> See note 3

- [41] He submitted that “[g]iven the high levels of [alcohol related harm] in Paraparaumu we should be looking at a significant reduction in the availability of alcohol in this neighbourhood”.

Evidence and submissions of the Licensing Inspector

- [42] The Inspector did not oppose the application.
- [43] At the hearing Ms McLellan noted that the appeal of the ARLA decision relating to Dannevirke New World had been heard in the High Court in October 2017 and that a decision is still pending.
- [44] Ms McLellan provided the Committee with a list of the licensed hours and trading hours of the other off-licences in Paraparaumu. On this list it can be seen that the other two supermarkets in Paraparaumu are licensed to and trade to 11pm each day. The bottle stores in the vicinity of the Applicant have licences that have various closing times, with the latest being 9pm. The Liquorland store has appealed to ARLA the decision which imposed a 9pm closing time.

Closing submissions

- [45] Mr Thain submitted that there were no issues raised on the Applicant’s original application for an off-licence. That application was decided under the current Act and the Committee’s decision was correct.
- [46] Mr Thain submitted that it is very clear from appeals to ARLA that Committees can only determine where the location of the SAA in store and not how it is configured. In terms of the hours of the store, Mr Thain stated that the Act speaks of “reasonableness”. He submitted that it is reasonable to apply for these hours when other stores have licences to trade till 11pm.
- [47] Mr Thain noted that the application is not to change anything existing and that there is simply no good basis to refuse the Application or amend the existing conditions.
- [48] Mr Thain stated that the material that Dr Palmer put forward is good for policy debate. However, he submitted that it is based on International study which is not applicable to this store or community.
- [49] Dr Palmer provided written closing submissions. He submitted that object of the Act is central to any decision which must also be guided and supported by the purpose of the Act. He emphasised that the object of the Act states that “harm caused by excessive or inappropriate consumption of alcohol should be minimised”.
- [50] He submitted that the most meaningful lever the Act provides to the Committee other than the power to grant or refuse a licence is the power to set hours of operation. He stated that this is particularly relevant in relation to off-licences which are unable to control the consumption of the alcohol that they supply.
- [51] He submitted that decision making under the Act is an evaluative exercise that includes an assessment of risk by the Committee. He submitted that it is appropriate for the Committee to take a precautionary approach.



- [52] Dr Palmer also set out a timeline of events to explain why MOH had not objected to the original issue of the Applicant's licence with the current SAA. This does not have an impact on the Committee's decision.
- [53] At the conclusion of the submission, he stated that supermarkets have proprietary research regarding product placement and its impact on the likelihood that shoppers will purchase a product. He submitted that the Committee should request these studies from the Applicant using the Committee's powers under the Commission of Inquiry Act 1905.
- [54] Dr Palmer suggested that he work with the applicant on a solution to eliminate the end aisles of display. He submitted that the Committee could resolve the matter by imposing a smaller SAA that effectively "cut off" the end of aisle displays. The Committee noted that this option had not been canvassed during the hearing and had not been put to the Applicant nor had he been given an appropriate opportunity to comment.
- [55] A short break was held to allow the Mr Young to discuss this option with counsel. When the hearing resumed Mr Young confirmed that the Applicant would not agree to a smaller SAA.
- [56] As the Medical Officer of Health had raised new matters in closing submissions the Applicant was given the opportunity to file closing submissions addressing the points raised. Mr Thain's submissions emphasised the decisions of the Authority in *Lion Liquor Retail Limited v Palmer & Rapira Davies*<sup>6</sup> and *A & M MacMaster v G & B Hasler Limited*<sup>7</sup> and the application of those decisions as addressing the points raised.

## **The Law**

- [57] The criteria that the committee must consider when deciding whether to renew a licence are set out in section 131 which also refers to section 105 of the Act.

## **Discussion**

- [58] The object of the Act is the overarching principle, or touchstone for determining off-licence applications. As Heath J put it in *Re Venus* [2015] NZHC 1377:

[20] Although the "object" of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the "object" of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

- [59] On this basis, the Committee considered the various criteria set out in section 105, with the final consideration being the object of the Act.

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<sup>6</sup> See note 3

<sup>7</sup> See note 1

### Suitability of the Applicant

[60] The Committee was satisfied as to the suitability of the Applicant.

### Any relevant local alcohol policy

[61] There is no local alcohol policy in place.

### The days and hours on which alcohol would be sold

[62] The application is for alcohol to be sold on Monday to Sunday from 7am to 10pm. These are less than the default maximum trading hours for off-licences and are less than other supermarkets in the general area but greater than the bottle stores in relatively near proximity.

[63] Consideration of the alteration of opening hours on renewal of a licence was recently considered by ARLA in *Lion Liquor Retail*<sup>8</sup>. In that decision the Authority stated:

[63] In the context of a licensing application, an approach that first identifies vulnerable communities and then seeks to reduce the availability of alcohol cannot substitute the requirement to identify whether a reduction in availability in respect of the particular premises is appropriate in light of the statutory object. This necessarily requires a link between the premises to the risk of excessive or inappropriate consumption at more than a generic level. If this were not the case, an evaluation of the matters set out in ss 105 and 131 would not provide the balance sought to be achieved in the Act between allowing the safe and responsible sale, supply and consumption of alcohol and the minimisation of harm caused by excessive and inappropriate consumption.

[64] The same reasoning applies when setting the mandatory condition under s 116(2)(a). In the context of a renewal application, a proposal to change trading hours on renewal relative to the premises' previous trading hours, in circumstances where there is little or no issue about the manner in which the applicant has operated its licence in the past, must be able to be explained by some evidence demonstrating abuse as a result of the granting of the renewal on those terms. This is not because there is a presumption that the hours of any licence will be the national maximum default hours set out in s 43 of the Act, but because any change in conditions should not be arbitrary.

[65] In this regard, the test is not whether setting a closing hour of 9.00 pm on Friday and Saturday nights is a rational response to established levels of ARH associated with the phenomena of pre-loading and side-loading in and around Courtenay Place in Wellington, but whether a change in the premises closing hour can be said to be a rational response to the probability of a greater degree of abuse associated with the premises resulting from the grant of the renewal.

[64] The Committee acknowledges that an appeal on this decision has been heard by the High Court and that a decision is expected shortly. However, this Committee must decide the application on the law as it stands at present, including current case law such as this decision by the Authority.

[65] While there was evidence presented to the Committee about the high deprivation areas nearby (which will be referred to as the "Makarini Street area") and relatively high levels of alcohol related harm for residents of Paraparaumu central, there was no link between those matters and the alcohol sold by the Applicant.

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<sup>8</sup> See note 3



- [66] The Makarini Street area is equally close to the Coastlands shopping precinct which includes two supermarkets which are licensed until 11pm each night. Mr Young's uncontested evidence was that the Applicant's two main markets are retired shoppers who shop during the day and professional families. Their focus is on range rather than price. In any event, there is no evidence of a link between the premises and inappropriate or excessive alcohol consumption. There is also no evidence of any issues relating to the way the premises have been operated in the past.
- [67] Without any such link the Committee cannot impose the shorter hours suggested by the MOH.

The design and layout of the premises

- [68] The Committee found the design and layout of the supermarket to be satisfactory. The SAA is discussed in further detail below.

Whether the applicant proposes to engage in the sale of goods other than beverages

- [69] The applicant proposes to trade as a supermarket. The legislation specifically allows for a supermarket to hold a type of off-licence which allows for the sale of beer and wine only.

Whether the applicant proposes to engage in the provision of services other than the sale of beverages

- [70] The applicant does not propose to engage in the provision of services other than those linked to operation as a supermarket.

Whether the amenity and good order of the locality would be likely be increased, by more than a minor extent, by the effects of a refusal to renew the licence

- [71] There was no evidence that refusing to renew the licence would result in any increase in the amenity and good order of the locality.

Whether the applicant's appropriate systems, staff and training comply with the law

- [72] The Committee is satisfied that the applicant has appropriate systems, staff and training to comply with the law.

Any matters dealt with in the report provided by the Police, Inspector, or Medical Officer of Health

- [73] No issues were raised by the reporting agencies that have not been considered elsewhere in this decision.

### The object of the Act

[74] The object of the Act is set out in section 4 of the Act, which states:

- (1) The object of this Act is that—
  - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
  - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
  - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
  - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[75] Having taken into account the criteria to be considered in relation to an application for renewal of an off-licence, the Committee is satisfied that this application is consistent with the object of the Act.

### Single Alcohol Area

[76] Under section 112 of the Act, when issuing or renewing an off-licence for a supermarket or grocery store the Committee must impose “on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol”. This is commonly referred to the single alcohol area or SAA.

[77] The purpose of the SAA is set out in section 112(1) as being to “limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol”.

[78] Section 113 of the Act sets out certain criteria for the Committee when determining the SAA. This can be separated into matters which are compulsory and some for which the Committee has a discretion.

[79] The approach that the Committee is required to take in applying the SAA provisions has been considered by the Court of Appeal in *J & C Vaudrey Ltd v Canterbury Medical Officer of Health*.

[80] The Court stated:

Section 113(1) directs the decision-maker to give genuine attention and thought to the purpose stated in s 112(1) in describing the perimeter of the single area. The decision-maker must take into account the purpose of limiting so far as reasonably practicable the extent of shoppers' exposure to alcohol displays, promotions and advertisements in describing the alcohol area.

[81] The Court elaborated stating:

[33] It is common ground that s 112(1) is not in itself an operative provision but sets out the specific purpose of the three single-area provisions, namely ss 112–114. By contrast, the dual requirements in s 113(5) are prerequisites to the function of describing an alcohol area. The point of contention arises from the direction in s 113(1) that the decision-maker “must have



regard to section 112(1)" when describing an alcohol area. Does that impose a discrete obligation on the decisionmaker?

[34] Gendall J considered that it does. He said:<sup>9</sup>

[61] I would therefore summarise the role of the relevant body in relation to the single area condition in these terms:

(a) In the case of an application for an off-licence which is also a supermarket or grocery store, the relevant body must impose a single area condition if it grants a licence. This entails an evaluative exercise requiring the relevant body to:

(i) be satisfied that the proposed area is a single area;

(ii) be satisfied that the proposed area complies with s 113(5)(b);

(iii) consider whether the proposed area plan limits, so far as is reasonably practicable, the exposure of shoppers to displays, promotions and advertisements of alcohol;

[82] The Court of Appeal confirmed the approach set out by Gendall J stating that it accurately captured the nature of the obligations imposed on the Committee or ARLA. The Court noted, however, that:

[41] The obligation imposed by s 113(1), while mandatory, is not as absolute in nature as the s 113(5) prerequisites. The requirement to "have regard to" a matter imports only an obligation to give genuine attention and thought to the stipulated matter.

[83] In considering this application, the Committee has followed the steps confirmed by the Court of Appeal.

[84] There was no dispute that the application set out a single area, nor was there any suggestion that the proposed SAA does meet the requirements of section 113(5)(b). The Committee was satisfied that the absolute prerequisites set out in section 113(5) were satisfied.

[85] Having confirmed that the proposed SAA complies with the mandatory requirements in section 113, the Committee turned to the next step of the analysis as set out by Judge Gendall. That is, that section 113(1) requires that the Committee must have regard to the purpose of the SAA as set out in section 112(1). Section 112(1) states:

The purpose of this section and sections 113 and 114 is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.

[86] The Committee considers that the current SAA is a small area which is clearly defined that shoppers are not required to pass through. While the area is visible from a number of aisles in the store there is no requirement for the area to be hidden away or out of sight. It is inevitable that the area will be visible from some points in the store. The Committee's view is that the area is proportionate to the store as a whole and did not stand out in any way.

[87] In addition, the Committee was of the view that it would be unreasonable to expect the Applicant to move the SAA into another place in the store. This was not raised as a suggestion at the hearing.

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<sup>9</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 [High Court judgment]

## Conditions

- [88] Under section 117(1) of the Act, the Committee may impose conditions on the issue of any licence. Such conditions must be reasonable. The reasons that have been given for the proposed conditions are essentially the minimising of alcohol related harm, giving effect to the object of the Act.
- [89] The Committee cannot restrict the layout of the SAA under the SAA provisions, but retains the discretion to impose conditions which meet the purpose of the Act for minimising alcohol related harm. It is important to note that the test for imposing conditions is not based on the same criteria for determining the SAA. The test is about minimising alcohol related harm not exposure.
- [90] The recent decision of *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749/2015 discusses section 117 of the Act. In this decision, His Honour, Judge Gendall stated:
- [104] I consider the principles can be stated as follows:
- (a) the relevant body must have identified a risk which it seeks to abate, or a benefit which it seeks to secure;
  - (b) that risk or benefit must be consistent with the purpose and object of the Act, and not inconsistent with the Act in its entirety. In this respect the comments of the authors of *Sale of Alcohol* are usefully repeated:<sup>121</sup>
- Any conditions considered under this provision must be reasonable, and, in the view of the authors, must relate to, and be consistent with, Parliament's intentions in the legislation as set out in ss 3 and 4 – the purpose and object of the Act;
- (c) the relevant body must direct itself as to all relevant circumstances;
  - (d) it must then weigh the risk to be abated, or benefit to be secured, against the relevant circumstances as identified;
  - (e) the condition must be a proportionate response.
- [91] As noted above, this Committee is bound by current case law at the time of deciding this Application. Specifically, this issue has been considered by ARLA in *A M MacMaster v G & B Hasler Limited*<sup>10</sup>. The Authority stated that when setting a SAA the decision maker must define the perimeter of the area but that it is the licensee who is able to determine how that space is utilised. The Authority stated:

[55] Turning to s 117, the Authority is bound by the Court of Appeal in *Vaudrey* which said, at [70] that conditions may not be imposed under s 117 that have the effect of altering the single-area condition imposed under s 112(2). It follows from what we have already said, that as the alcohol area condition is to identify where in the premises alcohol may be displayed and promoted, thereby giving effect to the purpose set out in s 112(1), the licensee is entitled to use all the space within the alcohol area, subject to any conditions imposed which do not have the effect of altering the area.

- [92] Further the Authority noted that:

[57] In *Vaudrey* (CA) it was acknowledged that it may be open to a DLC to impose conditions under s 117 relating to matters such as displays within an single alcohol area if that would advance the object of the Act as set out in s 4. However, the Court of Appeal did not decide the matter beyond confirming that conditions may not be imposed under s 117 that have the effect of altering the single-area condition imposed under s 112(2) [at 67 to 70].

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<sup>10</sup> See note 1



[59] Even if the angled shelving did increase the visibility of alcohol products, however, the Authority would need to be satisfied that a restriction on the angling of would be a proportionate response to the risk of harm caused by the excessive or inappropriate consumption of alcohol.

[93] Thus, the test for imposing a condition under section 117 is whether the condition would advance the object of the Act by minimising alcohol related harm. This test is not satisfied.

[94] While the MOH provided studies relating to placement of products at aisle ends, we note that the layout within the SAA would not be described as having aisle ends. The space is relatively small and products that are not on the shelves on the walls are placed on tables. The tables closer to the edge of the SAA are slightly lower than the rest. Removing those lower tables would simply mean that shoppers would see the alcohol on the higher tables more clearly. In addition, due to the open play layout of the area means almost all the alcohol is visible at the same time. There are no obvious aisle ends. The Committee considers that there is no link between the layout of the Applicant's SAA and an increase in inappropriate or excessive consumption of alcohol leading to harm.

[95] The Committee declines to impose any conditions relating to the layout of the SAA.

### ***Other matters raised***

[96] We note that at the end of the hearing the MOH suggested that the Committee defer its decision in the expectation that the High Court will shortly issue a decision in *Lion Liquor Retail Limited v Palmer & Rapira-Davies*<sup>11</sup>. While we have some sympathy with Dr Palmer in making this suggestion it would not be appropriate to take this course. The Applicant does not agree to any delay and wishes for this matter to be determined.

[97] Given the importance of that case it is quite possible that regardless of the outcome a further appeal to the Court of Appeal may be lodged. That would result in even further delay.

[98] As a matter of natural justice, the Committee must come to a decision based on the law as it currently stands.

[99] As noted above at the end of his closing submissions Dr Palmer suggested using our powers under the Commission of Inquiry Act to request research on proprietary market research that the Applicant may have. This was not mentioned or discussed any earlier in the hearing. It is not appropriate to raise such a suggestion at such late stage in proceedings. The Committee does not regard it as appropriate to use its powers in the way suggested in relation to this Application.

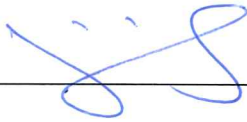
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<sup>11</sup> See note 3

## ***Decision***

- [100] The District Licensing Committee hereby grants the Application on the following conditions:
- [101] The area to be permitted for the display and promotion of alcohol (as required by section 112 of the Act) will be the area set out on the plan with the application for renewal.
- [102] The licence will be from 7am to 10pm seven days a week.

**DECISION MADE** at Paraparaumu on this 23<sup>rd</sup> day of March 2018



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**Cr Fiona Vining**  
Chair  
Kāpiti Coast District Licensing Committee

